

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00282 COA**

**JAMES THOMAS A/K/A JAMES EARL THOMAS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/22/96
TRIAL JUDGE:	HON. BETTY W. SANDERS
COURT FROM WHICH APPEALED:	WASHINGTON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GEORGE T. KELLY
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	FRANK CARLTON
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED ASSAULT: SENTENCED TO A TERM OF 20 YRS IN THE MDOC; DEFENDANT TO PAY ALL COURT COSTS OF \$192.50
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/23/97

BEFORE BRIDGES, C.J., DIAZ, AND COLEMAN, JJ.

BRIDGES, C.J., FOR THE COURT:

James Thomas<sup>(1)</sup> was indicted, tried, and convicted in the Washington County Circuit Court of the aggravated assault of his grandmother. He was sentenced to serve a term of twenty years in the custody of the Mississippi Department of Corrections, and ordered to pay court costs in the sum of \$192.50. On appeal, Thomas raises the following issues:

**I. THE TRIAL COURT SHOULD HAVE GRANTED THE MOTION FOR DIRECTED VERDICT SINCE THERE WAS A LACK OF SUFFICIENT CAUSAL CONNECTION PROVEN BETWEEN THE ASSAULT AND THE RESULTING CONDITION OF THE VICTIM.**

**II. THE COURT SHOULD HAVE GRANTED THE MOTION FOR DIRECTED VERDICT SINCE THE PROSECUTION FAILED TO PROVE THAT THE INCIDENT HAPPENED IN THE STATE OF MISSISSIPPI AND DID NOT REOPEN ITS CASE WHEN THAT FAILURE WAS BROUGHT TO THE ATTENTION OF THE COURT AT THE CLOSE OF THE STATE'S CASE.**

Finding no error in the trial court's actions, we affirm.

**FACTS**

On December 6, 1994, the police were called to the residence of Alma Lott in Leland, Mississippi. Lott is Thomas's grandmother with whom he was residing at the time. Police were called to the scene by an eyewitness to Thomas's assault of his grandmother. The Reverend Michael Palmer was called to Lott's house by a bystander. When he arrived at Lott's house, "James had his grandmother bent back across her car. . . and he was hitting her with his other hand, and I observed this myself."

Thomas finally let go of his grandmother and started walking down the street. The police arrived and apprehended Thomas. In the meantime, Lott had collapsed. When police officers attended Lott, her face was twisted to one side, she could not speak, and she was drooling severely. She has been in a nursing home since that day and is unable to speak or do things for herself. Before the assault, Lott was a normal, functioning, contributing resident of Leland. She was driving her own car and doing her own shopping. However, as a result of the assault, she suffered stroke-like debilitations.

After being apprehended, Thomas was arrested and put in custody. His case proceeded to trial where he pleaded not guilty by reason of insanity. However, Dr. Reb McMichael, an expert in psychiatry, testified that after performing a mental examination on Thomas, his opinion was that Thomas knew the difference between right and wrong at the time he beat his grandmother. Thomas took the stand in his own defense and stated that he knew what he did was wrong after he did it, but that at the time, he was drunk and being drunk had confused him. The jury was given the option of finding Thomas not guilty, not guilty by reason of insanity and a threat to the community, not guilty by reason of insanity but not a threat to the community, or guilty as charged. The jury unanimously found Thomas guilty as charged.

**I. THE TRIAL COURT SHOULD HAVE GRANTED THE MOTION FOR DIRECTED VERDICT SINCE THERE WAS A LACK OF SUFFICIENT CAUSAL CONNECTION PROVEN BETWEEN THE ASSAULT AND THE RESULTING CONDITION OF THE VICTIM.**

Thomas moved for a directed verdict at the close of the State's case. One of his contentions was that the State failed to prove the causal connection between Thomas's beating his grandmother and her resulting injuries. The standard of review for challenges to the sufficiency of the evidence is set forth in *McClain v. State*:

The three challenges by McClain (motion for directed verdict, request for peremptory instruction, and motion for JNOV) challenge the legal sufficiency of the evidence. Since each

requires consideration of the evidence before the court when made, this Court properly reviews the ruling on the last occasion the challenge was made in the trial court. This occurred when the Circuit Court overruled McClain's motion for JNOV. In appeals from an overruled motion for JNOV the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with McClain's guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

***McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993).** Although Thomas complains of the denial of his motion for directed verdict, his last challenge to the sufficiency of the evidence was his motion for JNOV. We will review Thomas's challenge to the sufficiency of the evidence in the light most favorable to the state and we will consider all the evidence presented at the time the last challenge was made, his motion for JNOV.

Thomas was charged with aggravated assault. The elements of aggravated assault are enumerated under Section 97-3-7 of the Mississippi Code:

A person is guilty of aggravated assault if he (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm. . . .

**Miss. Code Ann. § 97-3-7 (Rev. 1994).** The State proved with more than sufficient evidence that Thomas beat his grandmother. Eyewitness testimony showed that Thomas was causing serious bodily injury to his grandmother when he had her on her car hitting her in and about the face with his fists and choking her. Testimony proved that Lott was not suffering any of the post-beating ailments before Thomas assaulted her. However, testimony was ample that Lott was severely injured by the beating. She can no longer talk or function outside of a nursing home. She cannot do anything for herself anymore. There was substantial evidence that Thomas beat his grandmother and that as a result of that beating, she was seriously injured and suffers to this day. This issue is without merit.

**II. THE COURT SHOULD HAVE GRANTED THE MOTION FOR DIRECTED VERDICT SINCE THE PROSECUTION FAILED TO PROVE THAT THE INCIDENT HAPPENED IN THE STATE OF MISSISSIPPI AND DID NOT REOPEN ITS CASE WHEN THAT FAILURE WAS BROUGHT TO THE ATTENTION OF THE COURT AT THE CLOSE OF THE STATE'S CASE.**

Again, we view the evidence and all reasonable inferences therein in a light most favorable to the State. ***Roberson v. State*, 595 So. 2d 1310, 1320 (Miss. 1992).** During the State's examination of

Leland police officer Leon Hicks, the prosecutor asked where the assault occurred. Hicks replied that it occurred at 109 Hudson Avenue in Leland, Washington County. Hicks did not specify the state as Mississippi. At the close of the State's case, Thomas asked for a directed verdict because the State had failed to prove venue. The trial court overruled the motion for directed verdict, holding that venue was established. The trial court also overruled Thomas's motion for JNOV. Thomas has failed to prove that venue was not established.

"Proof of venue is indispensable to a criminal trial and it may be proved by direct or circumstantial evidence." *Smith v. State*, 646 So. 2d 538, 541 (Miss. 1994). The Mississippi Supreme Court has dealt with similar cases to Thomas's where testimony revealed in which city and county a crime took place, but no mention of Mississippi was made. *Holloway v. State*, 199 Miss. 356, 360, 24 So. 2d 857, 858 (1946). The supreme court stated, "[w]hile it is true that there is no positive, affirmative testimony in the record that the crime took place in Mississippi, we are of the opinion that fact is sufficiently shown by circumstantial evidence." *Id.* In the present case, we know that the crime took place in Leland, in Washington County, and that Thomas admitted that he had been to the gambling boats the night before. Like the supreme court in *Holloway*, we can take judicial notice that the trial took place in the Fourth Circuit District which is in Mississippi, and that Leland and Washington County are in that district. In connecting the pieces of evidence pertaining to venue, we are of the opinion that there was sufficient circumstantial evidence to prove proper venue. Thomas's second issue is also without merit, and we affirm.

**THE JUDGMENT OF THE WASHINGTON COUNTY CIRCUIT COURT OF AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ASSESSED TO WASHINGTON COUNTY.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

1. Judge James E. Thomas of this court is no relation to the appellant in this case.